seeds warranted to be alfalfa. The resulting crop contained some alfalfa, but consisted mostly of weeds, and was not marketable. *Held*, that the plaintiff may recover the value of the crop which would have resulted if all the seeds had been alfalfa. *Depew* v. *Peck Hardware Co.*, 121 N. Y. App. Div. 28.

The allowance of such prospective profits is usually based on the ground that the parties at the time of the warranty foresaw the use to which the seeds would be put, and that the value of the contemplated crop can be computed with reasonable certainty. *Passinger* v. *Thoburn*, 34 N. Y. 634. In the case of bulbs this certainty, at least as to quantity, is obvious, and the rule of the present case applies. *Edgar* v. *Breck*, 172 Mass. 581. But if no crop results from the wrong seeds, the evidence of the probable produce of the right seeds in the land and the year in question is insufficient, and hence the only damages recoverable are the expenses of planting and the rental value of the land. *Shaw* v. *Smith*, 45 Kan. 334; *contra*, *Phelps* v. *Eyria Milling Co.*, 12 Oh. Dec. 692. If there results a crop of the kind contemplated, but of inferior quality, prospective profits are allowed. *White* v. *Miller*, 71 N. Y. 118. If, however, the resulting crop is of an entirely different kind, it would seem that the computation of the expected crop is too uncertain. *Cf. Bell* v. *Mills*, 68 N. Y. App. Div. 531. The principal case seems to fall on this side of the line, though the fact that some of the expected kind of grass came up may be urged to support the decision.

ELECTIONS — CONSTITUTIONALITY OF VOTING MACHINES. — A state statute authorized the use of a voting machine whereby the voter made no separate ballot to be counted later, but had to trust to the mechanical accuracy of mechanism which he could not see. *Held*, that the machine does not fulfil the requirement of the state constitution that elections shall be by written vote. *Nichols* v. *Minton*, 82 N. E. 50 (Mass.).

For a discussion of a contrary holding under a slightly different constitutional provision, see 20 HARV. L. REV. 329.

ELECTIONS — INDORSEMENT OF BALLOTS WITH RUBBER STAMP. — A statute required that ballots should be indorsed with the initials of a judge of election. The ballots in question bore initials imprinted by a rubber stamp. *Held*, that the ballots are void. *Berryman* v. *Megginson*, 82 N. E. 256 (Ill.).

As the statute declared that ballots should not be counted unless indorsed by the initials of a judge, it was mandatory, not directory, and strict compliance was necessary. *Slaymaker* v. *Phillips*, 5 Wyo. 453. A stamp has been held sufficient where a signature is required. *Streff* v. *Colteaux*, 64 Ill. App. 179; *Bennett* v. *Brumfit*, L. R. 3 C. P. 28. But to effect the purpose of this statute, the greatest possible prevention of fraud, handwriting should be required. *Choisser* v. *York*, 211 Ill. 56. It shows that the ballot was cast in accordance with the law if the judge was honest; it is strong evidence against him if he was dishonest, whereas a stamp is not so strong evidence, since the die can be borrowed, stolen, or duplicated. It is often argued that such a statute as this is unconstitutional because a voter may be disenfranchised through the fault of judges of election. *Moyer* v. *Van de Vanter*, 12 Wash. 377. But the weight of authority is that, since a voter is presumed to know the law, if he uses a ballot without the initials of the election judge, his disenfranchisement is justifiable. *Miller* v. *Schallern*, 8 N. D. 395.

EMBEZZLEMENT — APPROPRIATION BY AGENT OF FUNDS COLLECTED ON COMMISSION. — An insurance company employed the defendant, who was not a general commission agent, to collect premiums, allowing him to deduct a commission from the funds received. He converted the whole to his own use. *Held*, that he is guilty of embezzlement. *Commonwealth* v. *Jacobs*, 104 S. W. 345 (Ky.).

If the agent is not to have his commission until he hands over to his principal the sum received, he is guilty of embezzlement if he feloniously converts it. *Commonwealth* v. *Smith*, 129 Mass. 104. But where he is entitled to deduct his commission before such delivery, he has an interest in the fund, and